

AMENDED IN ASSEMBLY AUGUST 22, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 17, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE MARCH 26, 2012

SENATE BILL

No. 1058

Introduced by Senator Lieu

February 13, 2012

An act to amend Sections 1502 and 2117 of, to add Chapter 22.5 (commencing with Section 2280) to Division 1 of Title 1 of, and to repeal Section 1502.5 of, the Corporations Code, relating to the Victims of Corporate Fraud Compensation Fund.

LEGISLATIVE COUNSEL'S DIGEST

SB 1058, as amended, Lieu. Victims of Corporate Fraud Compensation Fund.

Existing law establishes the Victims of Corporate Fraud Compensation Fund, a continuously appropriated fund, within the State Treasury administered by the Secretary of State, the sole purpose of which is to provide restitution to victims of corporate fraud.

This bill would revise and recast those provisions, including eliminating the requirement that the Secretary of State adopt those regulations. The bill would provide that an aggrieved person who obtains a final judgment, as specified, against a corporation based upon the corporation's fraud, misrepresentation, or deceit, made with intent to defraud, may file an application with the Secretary of State for payment from the fund for the amount unpaid on the judgment that represents

the awarded actual and direct loss to the claimant in the final judgment. The bill would limit the amount to be paid from the fund to \$50,000 with respect to any one claimant, as specified.

This bill would require a claimant to apply for restitution on a form prescribed by the Secretary of State including specified information and representations. The bill would establish procedures for the Secretary of State in determining whether a claim shall be paid, including giving written notice to the claimant and the corporation, as specified. The bill would prescribe procedures for judicial review of a denied claim. The bill would require a corporation to reimburse the fund and pay interest for any payment made from the fund by the Secretary of State in settlement of a claim or toward satisfaction of a final judgment against the corporation, as specified. The bill would make it a crime to file a document under these provisions that is false or contains willful, material misstatements. The bill would apply its provisions to applications submitted to the Secretary of State on or after January 1, 2013. The bill would make conforming changes.

Because this bill would create new crimes, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1502 of the Corporations Code is
- 2 amended to read:
- 3 1502. (a) Every corporation shall file, within 90 days after the
- 4 filing of its original articles and annually thereafter during the
- 5 applicable filing period, on a form prescribed by the Secretary of
- 6 State, a statement containing all of the following:
- 7 (1) The name of the corporation and the Secretary of State's
- 8 file number.
- 9 (2) The names and complete business or residence addresses of
- 10 its incumbent directors.
- 11 (3) The number of vacancies on the board, if any.

1 (4) The names and complete business or residence addresses of
2 its chief executive officer, secretary, and chief financial officer.

3 (5) The street address of its principal executive office.

4 (6) The mailing address of the corporation, if different from the
5 street address of its principal executive office.

6 (7) If the address of its principal executive office is not in this
7 state, the street address of its principal business office in this state,
8 if any.

9 (8) If the corporation chooses to receive renewal notices and
10 any other notifications from the Secretary of State by electronic
11 mail instead of by United States mail, the corporation shall include
12 a valid electronic mail address for the corporation or for the
13 corporation's designee to receive those notices.

14 (9) A statement of the general type of business that constitutes
15 the principal business activity of the corporation (for example,
16 manufacturer of aircraft; wholesale liquor distributor; or retail
17 department store).

18 (b) The statement required by subdivision (a) shall also
19 designate, as the agent of the corporation for the purpose of service
20 of process, a natural person residing in this state or a corporation
21 that has complied with Section 1505 and whose capacity to act as
22 an agent has not terminated. If a natural person is designated, the
23 statement shall set forth that person's complete business or
24 residence street address. If a corporate agent is designated, no
25 address for it shall be set forth.

26 (c) If there has been no change in the information in the last
27 filed statement of the corporation on file in the Secretary of State's
28 office, the corporation may, in lieu of filing the statement required
29 by subdivisions (a) and (b), advise the Secretary of State, on a
30 form prescribed by the Secretary of State, that no changes in the
31 required information have occurred during the applicable filing
32 period.

33 (d) For the purposes of this section, the applicable filing period
34 for a corporation shall be the calendar month during which its
35 original articles were filed and the immediately preceding five
36 calendar months. The Secretary of State shall provide a notice to
37 each corporation to comply with this section approximately three
38 months prior to the close of the applicable filing period. The notice
39 shall state the due date for compliance and shall be sent to the last
40 address of the corporation according to the records of the Secretary

1 of State or to the last electronic mail address according to the
2 records of the Secretary of State if the corporation has elected to
3 receive notices from the Secretary of State by electronic mail. The
4 failure of the corporation to receive the notice is not an excuse for
5 failure to comply with this section.

6 (e) Whenever any of the information required by subdivision
7 (a) is changed, the corporation may file a current statement
8 containing all the information required by subdivisions (a) and
9 (b). In order to change its agent for service of process or the address
10 of the agent, the corporation must file a current statement
11 containing all the information required by subdivisions (a) and
12 (b). Whenever any statement is filed pursuant to this section, it
13 supersedes any previously filed statement and the statement in the
14 articles as to the agent for service of process and the address of
15 the agent.

16 (f) The Secretary of State may destroy or otherwise dispose of
17 any statement filed pursuant to this section after it has been
18 superseded by the filing of a new statement.

19 (g) This section shall not be construed to place any person
20 dealing with the corporation on notice of, or under any duty to
21 inquire about, the existence or content of a statement filed pursuant
22 to this section.

23 (h) The statement required by subdivision (a) shall be available
24 and open to the public for inspection. The Secretary of State shall
25 provide access to all information contained in this statement by
26 means of an online database.

27 (i) In addition to any other fees required, a corporation shall
28 pay a five-dollar (\$5) disclosure fee when filing the statement
29 required by subdivision (a). One-half of the fee shall be utilized
30 to further the provisions of this section, including the development
31 and maintenance of the online database required by subdivision
32 (h), and one-half shall be deposited into the Victims of Corporate
33 Fraud Compensation Fund established in Section 2280.

34 (j) A corporation shall certify that the information it provides
35 pursuant to subdivisions (a) and (b) is true and correct. No claim
36 may be made against the state for inaccurate information contained
37 in the statements.

38 SEC. 2. Section 1502.5 of the Corporations Code is repealed.

39 SEC. 3. Section 2117 of the Corporations Code is amended to
40 read:

1 2117. (a) Every foreign corporation (other than a foreign
2 association) qualified to transact intrastate business shall file,
3 within 90 days after the filing of its original statement and
4 designation of foreign corporation and annually thereafter during
5 the applicable filing period, on a form prescribed by the Secretary
6 of State, a statement containing the following:

7 (1) The name of the corporation as registered in California and
8 the California Secretary of State's file number.

9 (2) The names and complete business or residence addresses of
10 its chief executive officer, secretary, and chief financial officer.

11 (3) The street address of its principal executive office.

12 (4) The mailing address of the corporation, if different from the
13 street address of its principal executive office.

14 (5) The street address of its principal business office in this
15 state, if any.

16 (6) If the corporation chooses to receive renewal notices and
17 any other notifications from the Secretary of State by electronic
18 mail instead of by United States mail, the corporation shall include
19 a valid electronic mail address for the corporation or for the
20 corporation's designee to receive those notices.

21 (7) A statement of the general type of business that constitutes
22 the principal business activity of the corporation (for example,
23 manufacturer of aircraft; wholesale liquor distributor; or retail
24 department store).

25 (b) The statement required by subdivision (a) shall also
26 designate, as the agent of the corporation for the purpose of service
27 of process, a natural person residing in this state or a corporation
28 that has complied with Section 1505 and whose capacity to act as
29 the agent has not terminated. If a natural person is designated, the
30 statement shall set forth the person's complete business or
31 residence street address. If a corporate agent is designated, no
32 address for it shall be set forth.

33 (c) The statement required by subdivision (a) shall be available
34 and open to the public for inspection. The Secretary of State shall
35 provide access to all information contained in the statement by
36 means of an online database.

37 (d) In addition to any other fees required, a foreign corporation
38 shall pay a five-dollar (\$5) disclosure fee upon filing the statement
39 required by subdivision (a). One-half of the fee shall be utilized
40 to further the provisions of this section, including the development

1 and maintenance of the online database required by subdivision
2 (d), and one-half shall be deposited into the Victims of Corporate
3 Fraud Compensation Fund established in Section 2280.

4 (e) Whenever any of the information required by subdivision
5 (a) is changed, the corporation may file a current statement
6 containing all the information required by subdivisions (a) and
7 (b). In order to change its agent for service of process or the address
8 of the agent, the corporation shall file a current statement
9 containing all the information required by subdivisions (a) and
10 (b). Whenever any statement is filed pursuant to this section, it
11 supersedes any previously filed statement and the statement in the
12 filing pursuant to Section 2105.

13 (f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to
14 statements filed pursuant to this section, except that “articles” shall
15 mean the filing pursuant to Section 2105, and “corporation” shall
16 mean a foreign corporation.

17 SEC. 4. Chapter 22.5 (commencing with Section 2280) is added
18 to Division 1 of Title 1 of the Corporations Code, to read:

19
20 CHAPTER 22.5. VICTIMS OF CORPORATE FRAUD COMPENSATION
21 FUND
22

23 2280. The Victims of Corporate Fraud Compensation Fund is
24 hereby established in the State Treasury. The fund shall be
25 administered by the Secretary of State for the sole purpose of
26 providing restitution to the victims of a corporate fraud. The
27 Secretary of State shall adopt regulations in furtherance of the
28 administration of this chapter. Notwithstanding Section 13340 of
29 the Government Code, the money in the fund is continuously
30 appropriated to the Secretary of State for the purposes authorized
31 by this chapter.

32 2281. As used in this chapter:

33 (a) “Application” means a request for payment from the fund
34 submitted to the Secretary of State pursuant to this chapter.

35 (b) “Claimant” means an aggrieved person who resides in the
36 state at the time of the fraud and who submits an application
37 pursuant to this chapter.

38 (c) “Complaint,” for the purpose of an application based on a
39 criminal restitution order, means the facts of the underlying

1 transaction or transactions upon which the criminal restitution
2 order is based.

3 (d) “Corporation” means a domestic corporation as defined by
4 Section 162 or 2509 or a foreign corporation that is qualified to
5 transact business in California pursuant to Section 2105.

6 (e) “Court of competent jurisdiction” means a state or federal
7 court situated in California ~~and applying California law~~.

8 (f) “Final judgment” means a judgment, arbitration award, or
9 criminal restitution order for which appeals have been exhausted
10 or for which the period for appeal has expired, enforcement of
11 which is not barred by the order of any court or by any statutory
12 provision, which has not been nullified or rendered void by any
13 court order or statutory provision, and for which the claimant has
14 not otherwise been fully reimbursed. The following are examples
15 of final judgments:

16 (1) A civil judgment that has been entered against a corporation
17 for fraud, misrepresentation, or deceit, with the intent to defraud,
18 and includes findings of facts and conclusions of law.

19 (2) If the matter was submitted to arbitration, a copy of the
20 arbitration decision and any other documentation supporting the
21 arbitration award. An arbitration award against a corporation for
22 conduct constituting fraud, misrepresentation, or deceit, with the
23 intent to defraud, that includes findings of fact and conclusions of
24 law rendered in accordance with the rules established by the
25 American Arbitration Association or another recognized arbitration
26 body, and in accordance with Sections 1280 to 1294.2, inclusive,
27 of the Code of Civil Procedure where applicable, and where the
28 arbitration award has been confirmed and reduced to judgment
29 pursuant to Section 1287.4 of the Code of Civil Procedure.

30 (3) A criminal restitution order issued by a court of competent
31 jurisdiction against a corporation for fraud, misrepresentation, or
32 deceit, with the intent to defraud, pursuant to subdivision (f) of
33 Section 1202.4 of the Penal Code or Section 3663 of Title 18 of
34 the United States Code. An application for payment from the fund
35 that is based on a criminal restitution order shall comply with all
36 of the requirements of this chapter.

37 (g) “Fund” means the Victims of Corporate Fraud Compensation
38 Fund created by Section 2280.

39 2282. (a) When an aggrieved person obtains a final judgment
40 in a court of competent jurisdiction against a corporation based

1 upon the corporation's fraud, misrepresentation, or deceit, made
2 with intent to defraud, the aggrieved person may, upon the
3 judgment becoming final and after diligent collection efforts are
4 made, file an application with the Secretary of State for payment
5 from the fund, within the limitations specified in Section 2289,
6 for the amount unpaid on the judgment that represents the awarded
7 actual and direct loss, any awarded compensatory damages, and
8 awarded costs to the claimant in the final judgment, excluding
9 punitive damages.

10 (b) The application shall be delivered in person or by certified
11 mail to the Secretary of State not later than 18 months after the
12 judgment has become final.

13 (c) The application shall be made on a form prescribed by the
14 Secretary of State and shall include each of the following:

15 (1) The name and address of the claimant.

16 (2) If the claimant is represented by an attorney for the
17 application, the name, business address, and telephone number of
18 the attorney. If the claimant is not represented by an attorney for
19 the application, a telephone number where the claimant can be
20 reached during regular business hours shall be included.

21 (3) The name and address of the corporation.

22 (4) The identification of the final judgment, the amount of the
23 claim that remains unreimbursed from any source, and an
24 explanation of the claim's computation.

25 (5) A copy of a final judgment and a copy of the civil complaint
26 and any amendments thereto upon which the judgment finding
27 fraud, misrepresentation, or deceit, made with the intent to defraud,
28 was made shall be deemed to satisfy compliance with the
29 requirements prescribed in this paragraph. The claimant may also
30 provide any additional documentation that he or she believes may
31 help the Secretary of State in evaluating the application, including,
32 but not limited to, evidence submitted to the court in the underlying
33 judgment or a detailed narrative statement of facts in explanation
34 of the allegations of the complaint upon which the underlying
35 judgment is based.

36 (6) A description of searches and inquiries conducted by or on
37 behalf of the claimant with respect to the corporation's assets liable
38 to be sold or applied to satisfaction of the judgment. A court's
39 determination or finding of the corporation's insolvency or lack

1 of assets to pay the claimant shall be deemed to satisfy the
2 requirements prescribed in this paragraph.

3 (7) Each of the following representations by the claimant:

4 (A) That the claimant is not a spouse or an immediate family
5 member of an employee, officer, director, managing agent, or other
6 principal of the corporation nor a personal representative of the
7 spouse or an immediate family member of an employee, officer,
8 director, managing agent, or other principal of the corporation.

9 (B) That the claimant has complied with all of the requirements
10 of this section.

11 (C) That the judgment underlying the claim meets the
12 requirements of subdivisions (a) and (b) of Section 2282, including
13 all of the following:

14 (i) That the judgment was for fraud, misrepresentation, or deceit
15 by the corporation, with the intent to defraud.

16 (ii) That the judgment is unpaid in part or in whole.

17 (iii) That the underlying judgment and debt have not been
18 discharged in bankruptcy, or the underlying judgment is statutorily
19 nondischargeable, or, in the case of a bankruptcy proceeding that
20 is open at or after the time of the filing of the application, that the
21 judgment and debt have been declared to be nondischargeable by
22 the judge or stipulated as nondischargeable by the parties in the
23 proceeding and that the claimant has been granted permission by
24 the bankruptcy court to proceed with collection or otherwise
25 proceed with the claimant's claims against the corporation.

26 (D) That the claimant does not have a pending claim and has
27 not collected on the final judgment from any other restitution fund.
28 If the claimant has a pending claim or has collected from another
29 fund, a description of the nature of the pending claim and the
30 recovery amounts from any restitution fund.

31 (d) (1) Except as provided in paragraphs (2), (3), and (4) the
32 Secretary of State shall not condition an award of payment from
33 the fund upon a claimant providing any additional information or
34 documents other than those prescribed in subdivision (c).

35 (2) If the final judgment in favor of the claimant was by default,
36 stipulated, a consent judgment, or pursuant to Section 594 of the
37 Code of Civil Procedure or if the action against the corporation
38 was defended by a trustee in bankruptcy, the Secretary of State
39 may request additional documents and information from the
40 claimant to determine whether the claim is valid.

(3) If the final judgment does not expressly set forth the amount of damages that were awarded for actual loss and compensatory damages that are payable from the fund pursuant to Section 2289, the Secretary of State may ask the claimant to provide copies of documentation pertaining to the amount of the actual and direct loss and the awarded compensatory damages or both of those findings. For purposes of this section, “sufficient proof of money damages” may include any of the following: copies of bank account statements showing or confirming particular transactions, copies of the front and back of checks made payable to the corporation that have been negotiated, credit card statements showing or confirming particular transactions, or similar documentation demonstrating financial loss directly resulting from the fraudulent acts by the corporation and the amount of compensatory damages awarded by the court.

(4) If there is no court determination or finding of the corporation’s insolvency or lack of assets to pay the claimant, the Secretary of State may request additional information and documentation from the claimant to determine what assets, if any are available to satisfy the final judgment.

(e) The Secretary of State shall include with the application form a notice to the claimant of his or her obligation to protect the underlying judgment from discharge in bankruptcy, to be appended to the application.

(f) If a claimant is a spouse or an immediate family member of an employee, officer, director, managing agent, or other principal of the corporation, or is a personal representative of the spouse or an immediate family member of an employee, officer, director, managing agent, or other principal of the corporation, the claimant shall not be precluded for that reason alone from receiving an award where the claimant can otherwise meet the requirements of this section.

2282.1. (a) The Secretary of State shall provide notice to the corporation that a claimant has submitted an application for payment from the fund and shall also provide within that notice, as prescribed by the Secretary of State, the method to contest the payment from the fund.

(b) The notice shall be provided by certified mail addressed to the corporation’s last designated agent for service of process of

1 record with the Secretary of State and notice shall be deemed
2 complete five calendar days after the notice is mailed.

3 (c) If the corporation wishes to contest payment of an application
4 by the Secretary of State, the corporation shall mail or deliver a
5 written response addressed to the Secretary of State within 30
6 calendar days of the notice of the application, and shall mail or
7 deliver a copy of the response to the claimant. The written response
8 of the corporation shall not be directed to issues and facts
9 conclusively established by the underlying judgment. If the
10 corporation fails to mail or deliver a timely response, the
11 corporation shall have waived the corporation's right to present
12 objections to payment of the application, and shall not thereafter
13 be entitled to notice of any action taken or proposed to be taken
14 by the Secretary of State with respect to the application.

15 2282.2. (a) The response by the corporation shall be by an
16 officer or director and shall contain proof of service showing that
17 a copy of the response was sent to the claimant, or if the claimant
18 is represented by an attorney for purposes of the application, to
19 the claimant's attorney, at the address specified in the application
20 for the claimant or the claimant's attorney, respectively.

21 (b) If the corporation is not represented by an attorney in
22 objecting to payment of the application, the response shall contain
23 the name, title, and address of the officer, director, managing agent,
24 or other responsible person authorized to represent the corporation
25 and the address at which the corporation wishes to receive
26 correspondence and notices relating to the application, and a
27 telephone number at which the corporation's representative can
28 be reached during regular business hours. If the corporation is
29 represented by an attorney in objecting to the application, the
30 response shall contain the name, business address, and telephone
31 number of the attorney.

32 2283. (a) If the Secretary of State determines that the
33 application, as submitted by the claimant, fails to comply with the
34 requirements of Section 2282, the Secretary of State shall, within
35 21 calendar days after receipt of the application by a single claimant
36 or within 40 calendar days after receipt of the application by
37 multiple claimants, mail an itemized list of deficiencies to the
38 claimant.

39 (b) The time within which the Secretary of State is required to
40 act under Section 2284 shall be measured from the date of receipt

1 by the Secretary of State of a completed application. In the event
2 of an irreconcilable dispute between the claimant and the Secretary
3 of State on the question of whether the application is complete,
4 the claimant may immediately file the claim with the court pursuant
5 to Section 2287.

6 (c) If the Secretary of State has mailed one or more itemized
7 lists of deficiencies to a claimant, and, if after 30 calendar days
8 the Secretary of State has not received a response to the latest list
9 of deficiencies, the Secretary of State shall notify the claimant
10 that, unless the claimant responds to the deficiencies within a
11 specified period of time of not less than 15 calendar days, the
12 application will be denied.

13 2284. (a) The Secretary of State shall render a final written
14 decision on the application within 90 calendar days after a
15 completed application has been received unless the claimant agrees
16 in writing to extend the time within which the Secretary of State
17 may render a decision.

18 (b) The Secretary of State may deny or grant the application or
19 may enter into a compromise with the claimant to pay less in
20 settlement than the full amount of the claim. If the claimant refuses
21 to accept a settlement of the claim offered by the Secretary of
22 State, the written decision of the Secretary of State shall be to deny
23 the claim. Evidence of settlement offers and discussions between
24 the Secretary of State and the claimant shall not be competent
25 evidence in judicial proceedings undertaken by the claimant
26 pursuant to Section 2287.

27 (c) Upon issuance of a proposed decision to award payment or
28 an offer to compromise, the claimant shall have 60 calendar days
29 from the date of service of the proposed award or offer to
30 compromise to accept the proposed award or offer to compromise.
31 If the claimant fails to accept the proposed award or offer to
32 compromise within the specified time, the application shall be
33 deemed denied.

34 2285. The Secretary of State shall give written notice, as
35 prescribed by the Secretary of State, of a decision rendered with
36 respect to the application to the claimant.

37 2286. The Secretary of State shall give notice, as prescribed
38 by the Secretary of State, to the corporation that the Secretary of
39 State has made a decision to award funds to the claimant and shall
40 provide a copy of the decision to the corporation.

1 2287. (a) A claimant against whom the Secretary of State has
2 rendered a decision denying an application may, within six months
3 after the mailing of the notice of the denial, file a verified petition
4 in superior court for an Order Directing Payment Out of the
5 Victims of Corporate Fraud Compensation Fund based upon the
6 grounds set forth in the application to the Secretary of State. If the
7 underlying judgment is a California state court judgment, the
8 petition shall be filed in the court in which the underlying judgment
9 was entered. If the underlying judgment is not a California state
10 court judgment or is a federal court judgment, the petition shall
11 be filed in the superior court of any county within California that
12 would have been a proper venue if the underlying lawsuit had been
13 filed in a California state court, or in the Superior Court of the
14 County of Sacramento.

15 (b) A copy of the petition shall be served upon the Secretary of
16 State by the claimant. A certificate or affidavit of service shall be
17 filed by the claimant with the court. Service on the Secretary of
18 State may be made by mail addressed to the Secretary of State's
19 office.

20 (c) The Secretary of State shall have 30 calendar days after
21 being served with the petition in which to file a written response.
22 The court shall thereafter set the matter for hearing upon the request
23 of the claimant. The court shall grant a request of the Secretary of
24 State for one continuance of as much as 30 calendar days and may,
25 upon a showing of good cause by any party, continue the hearing
26 as the court deems appropriate.

27 (d) The claimant shall have the burden of proving compliance
28 with the requirements of Section 2282 by competent evidence at
29 an evidentiary hearing. The claimant shall be entitled to a de novo
30 review of the merits of the application as contained in the
31 administrative record.

32 (e) At any time during the court proceedings, the petition may
33 be compromised or settled by the Secretary of State and the court
34 shall, upon joint petition of the claimant and the Secretary of State,
35 issue an order directing payment out of the fund.

36 2288. (a) Whenever the court proceeds upon a petition under
37 Section 2287, it shall order payment out of the fund only upon a
38 determination that the aggrieved party has a valid cause of action
39 within the purview of Section 2282, and has complied with Section
40 2287.

(b) (1) The Secretary of State may defend any action on behalf of the fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses and the right to relitigate any issues that are material and relevant in the proceeding against the fund. The claimant's judgment shall create a rebuttable presumption of the fraud, misrepresentation, or deceit by the corporation, which presumption shall affect the burden of producing evidence.

(2) If the civil judgment, arbitration award, or criminal restitution order in the underlying action on which the final judgment in favor of the petitioner was by default, stipulation, consent or pursuant to Section 594 of the Code of Civil Procedure, or if the action against the corporation was defended by a trustee in bankruptcy, the petitioner shall have the burden of proving that the cause of action against the corporation was for fraud, misrepresentation, or deceit.

(c) The Secretary of State may move the court at any time to dismiss the petition when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of Section 2282; provided, however, the Secretary of State shall give written notice at least 10 calendar days before hearing on the motion to the claimant.

2289. (a) Notwithstanding any other provision of this chapter and regardless of the number of persons aggrieved in an instance of corporate fraud, or misrepresentation or deceit resulting in a judgment meeting the requirements of Section 2282, or the number of judgments against a corporation, the liability of the fund shall not exceed fifty thousand dollars (\$50,000) for any one claimant per single judgment finding fraud, misrepresentation, or deceit, made with the intent to defraud.

(b) When multiple corporations are involved in the same event or series of events that are the basis of the claimant's final judgment and the conduct of two or more of the corporations results in a judgment meeting the requirements of Section 2282, the claimant may seek recovery from the fund based on the judgment against any one of the corporations, subject to the limitations of subdivision (a).

1 (c) When multiple claimants are involved in a corporate fraud,
2 or in misrepresentation or deceit by a corporation, resulting in a
3 judgment meeting the requirements of Section 2282, each claimant
4 may seek recovery from the fund individually, subject to the
5 limitations of subdivision (a).

6 (d) Claimants who are spouses, registered domestic partners,
7 or persons other than natural persons, that have obtained an eligible
8 final judgment shall be considered one claimant.

9 2290. If, at any time, the money deposited in the fund is
10 insufficient to satisfy any duly authorized award or offer of
11 settlement, the Secretary of State shall, when sufficient money has
12 been deposited in the fund, satisfy the unpaid awards or offer of
13 settlement, in the order that the awards or offers of settlement were
14 originally filed, plus accumulated interest at the rate set by the
15 Federal Reserve Bank of San Francisco on advances made to
16 member banks under Sections 13 and 13a of the Federal Reserve
17 Act, at the time of the award or settlement offer, not to exceed 2
18 percent per year.

19 2291. Any sums received by the Secretary of State pursuant
20 to any provisions of this chapter shall be deposited in the State
21 Treasury and credited to the fund.

22 2292. It shall be unlawful for any person or the agent of any
23 person to file with the Secretary of State any notice, statement, or
24 other document required under the provisions of this chapter that
25 is false or untrue or contains any willful, material misstatement of
26 fact. That conduct shall constitute a public offense punishable by
27 imprisonment in a county jail for a period of not more than one
28 year or a fine of not more than one thousand dollars (\$1,000), or
29 both.

30 2293. When the Secretary of State has paid from the fund any
31 sum to the claimant, the Secretary of State shall be subrogated to
32 all of the rights of the claimant and the claimant shall assign all of
33 his or her right, title, and interest in the judgment to the Secretary
34 of State and any amount and interest so recovered by the Secretary
35 of State on the judgment shall be deposited in the fund.

36 2293.1. If the Secretary of State pays from the fund any amount
37 in settlement of a claim or toward satisfaction of a final judgment
38 against a corporation, the corporation shall be required to pay to
39 the fund the amount paid plus interest at the prevailing legal rate
40 applicable to a judgment rendered in any court of this state, within

1 30 calendar days of the date that the Secretary of State provided
2 notice of the payment of the award or compromise. If the
3 corporation fails to make the required payment to the fund within
4 the required time, the corporation shall be suspended until the
5 payment is made. A discharge in bankruptcy shall not relieve a
6 corporation from the penalties and disabilities provided in this
7 chapter.

8 2294. The Secretary of State shall not make any award to a
9 claimant from the fund if the claimant has received payment from
10 any other restitution funds or for the portions of the judgment that
11 the claimant has collected from the corporation or any other
12 defendant in the underlying judgment.

13 2295. The failure of an aggrieved person to comply with all of
14 the provisions of this chapter shall constitute a waiver of any rights
15 hereunder.

16 2296. This chapter shall apply to applications submitted to the
17 Secretary of State on or after January 1, 2013.

18 SEC. 5. No reimbursement is required by this act pursuant to
19 Section 6 of Article XIII B of the California Constitution because
20 the only costs that may be incurred by a local agency or school
21 district will be incurred because this act creates a new crime or
22 infraction, eliminates a crime or infraction, or changes the penalty
23 for a crime or infraction, within the meaning of Section 17556 of
24 the Government Code, or changes the definition of a crime within
25 the meaning of Section 6 of Article XIII B of the California
26 Constitution.